**THE HONOURABLE SRI JUSTICE J. CHELAMESWAR**

**AND**

**THE HON'BLE SRI JUSTICE D. APPA RAO**

**W.P. No. 11362 of 2006**

**Dated: 13.06.2006**

Between:-

M/s Punj Lloyd Limited,

17-18, Nehru Place, New Delhi-110 019

represented by its Senior Executive (Finance & Accounts)

Mr. S. Gangadhara Rao.

..Petitioner

And

1. The Commercial Tax Officer, Amalapuram
2. The Appellate Deputy Commissioner (CT)Visakhapatnam
3. The Joint Commissioner (CT) Legal, Andhra Pradesh, Nampally, Hyderabad
4. M/s Andhra Expressway Limited, regd. Office: Ahluwalia Chambers,

   16/17 LSC, Madangir New Delhi

   BO: Maintenance Yard, village Tetagunta (NH Chainage 277+350 KM)

   Mandal Tuni, East Godavari District.

..Respondents.

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**O R D E R** (per the Hon'ble Sri Justice D. Appa Rao)

The petitioner is a works contractor, doing execution of road works, pipe line works etc., a registered dealer under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as 'the Act'). Since it is a dealer executing the works contracts, it is liable to pay the tax under Section 5-F of the Act on the turn over of goods involved in execution of works contract and pay tax. If the execution of works extends beyond one year in which case the assessment is to be made under Section 5-F read with Rule 6 (3) (i) of the APGST Rules. By operation of the Rule the turn over would be the value of goods purchased for use in execution of the works during the year. Accordingly, it has reported its turn over for the year 2001-02 and 2002-03. The 1st respondent assessed the petitioner for 2001-2002 under Rule 6(2) instead of Rule 6 (3) (i) by adopting the receipts method. Aggrieved by the said order, the petitioner preferred appeals before the 2nd respondent. The 2nd respondent set aside the order and remanded the matter to the Assessing Authority with a positive direction to assess the petitioner under Rule 6 (3) (i). Contrary to the order of remand, the 1st respondent again confirmed the levy under Rule 6 (2). Since the execution of works was beyond one year applying the Rule 6 (3) (i) was mandatory. Again he preferred an appeal before the 2nd respondent. While the 2nd respondent did not dispose of the stay application filed by him for the assessment year 2001-2002, he rejected the stay application for the year 2002-2003, though he paid the admitted tax besides 12.5% of the disputed tax. Aggrieved by the order of the 2nd respondent, it has preferred a revision before the 3rd respondent. The stay application filed before the 3rd respondent is yet to be disposed of. In the meantime, the 1st respondent issued a garnishee notice, dated 10.05.2006, under Section 17 of the Act to the 4th respondent for recovery of the disputed taxes for the years 2001-2002 and 2002-2003. Challenging the said proceedings by the 1st respondent, the present writ petition is filed with the prayer as follows;-

> "….the Hon'ble Court may be pleased to issue a writ of Mandamus or any other appropriate writ or order or direction setting aside the impugned notice of 1st respondent dated 10.5.2006 issued to the 4th respondent for recovery of the disputed tax of Rs.3,07,025/- and Rs.1,77,04,595/- for the assessment years 2001-2002 and 2002-2003 respectively and consequently restrain the 1st respondent from taking any coercive steps for recovery of the disputed taxes mentioned above till the disposal of the appeals before the 2nd respondent…."

It is not in dispute that the petitioner is a works contractor, executing road works, pipe line works etc. and one of the raw materials used is cement. While the petitioner contends that he is liable to pay the tax under Section 5-F of the Act read with Rule 6 (3) (i) of the APGST Rules on the turn over basis, the 1st respondent adopted the receipts method as contemplated under Rule 6(2).

The question whether the case falls under Rule 6 (3) (i) or Rule 6(2) of the APGST Rules would be considered in the proceedings before the appropriate authority.

It is not in dispute that the petitioner had paid the admitted tax and also 12.5% of the disputed tax before preferring the appeal. It is also not in dispute that the 2nd respondent by its order dated 10.08.2005 directed the 1st respondent, the assessing authority, to assess the petitioner under Rule 6 (3) (i) of the APGST Rules. Contrarily the orders were passed under Rule 6(2) ignoring the orders of the Appellate Authority. We may also mention herein that when the penalty at five times the tax for the years 2001-2002 to 2004-2005 and a garnishee notice dated 10.5.2006 was issued, the same was stayed by this Court in W.P. No. 11340 of 2006 by order dated 09.06.2006 on furnishing the bank guarantee for an amount of Rs. 90 lakhs, within a period of three weeks, pending decision of the Tribunal.

The controversy is that pending an appeal, application for stay was dismissed by the competent authority and in one case it was kept pending. We have gone through the record. We are of the opinion that the interest of justice would have been met if stay was granted pending appeal, subject to deposit of half of the liability. Therefore, we set aside the order of the authority and direct that there shall be stay during the pendency of the appeal subject to the condition that half of the disputed tax liability shall be paid by the petitioner within a period of six weeks. Until such deposit is made, the garnishee is directed not to release the amounts held by him. If any amount is already paid, it shall be given deduction while computing the amount.

The writ petition is accordingly disposed of at the stage of admission with the above directions. No order as to costs.

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J. CHELAMESWAR,J

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D. APPA RAO, J

13th June, 2006

kvr/vp